

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
A SHORELINE VARIANCE PERMIT )  
GRANTED BY )  
CHELAN COUNTY TO CORNING LAND )  
AND CATTLE COMPANY AND APPROVED )  
WITH CONDITIONS BY DEPARTMENT )  
OF ECOLOGY, )  
CORNING LAND AND CATTLE COMPANY, )  
Appellant, )  
v. )  
STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY, )  
Respondent. )

SHB No. 80-1

FINAL FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND ORDER

This matter, a request for review of Department of Ecology's approval with conditions of a shoreline variance permit granted by Chelan County to Corning Land and Cattle Company, came on for hearing before the Shorelines Hearings Board, Chris Smith, William A. Johnson, Rodney Kerslake, and James S. Williams, convened at Yakima,

1 Washington, on March 27, 1980. Hearing Examiner William A. Harrison  
2 presided.

3 Appellant Corning Land and Cattle Company appeared by its  
4 attorney, Robin R. Gaukroger. Respondent appeared by Jeffrey D.  
5 Goltz, Assistant Attorney General. Chelan County, not joined as a  
6 party in this matter, submitted a hearing memorandum which was duly  
7 considered.

8 Having heard or read the testimony, having examined the exhibits,  
9 having considered the contentions of the parties; and the Board having  
10 served its proposed decision upon the parties herein, and having  
11 received exceptions thereto from appellant which were denied and  
12 exceptions thereto from respondent which were granted, the Board now  
13 makes these

#### 14 FINDINGS OF FACT

##### 15 I

16 Appellant is a corporation owned by the minor children of John J.  
17 Corning. Appellant owns a waterfront lot on Lake Chelan where this  
18 case arises. Historically there has been a bulkhead protecting the  
19 lot and a 15 foot wide boathouse protruding some 10 feet waterward of  
20 the bulkhead. Because this old bulkhead became dilapidated, appellant  
21 seeks to construct a new bulkhead in the same approximate location but  
22 seeks also to use the foundation of the old boathouse as bulkhead,  
23 filling within the old boathouse and landward. This would create a 10  
24 x 15 foot protrusion waterward in the line of the finished bulkhead.  
25 All the proposed bulkheading and 14' to 40' of the width of the fill  
26 would be waterward of the ordinary high water mark. The bulkhead and  
27

1 fill, exclusive of the protrusion created by the former boathouse,  
2 would be aligned evenly with that of the neighboring downlake lot.

3 II

4 In July and August, 1979, appellant filed three applications with  
5 Chelan County for substantial development and variance permits under  
6 the Shoreline Management Act, chapter 90.58 RCW, for the proposed  
7 development described above and for construction of a recreational  
8 home at the site in question.

9 III

10 The staff of the Chelan County planning department recommended to  
11 the Chelan County Board of Adjustment that a variance for the  
12 bulkheading and fill be approved excepting the 10 x 15 foot protrusion  
13 created by filling the boathouse foundation, and augmented by a  
14 diagonal line of bulkhead which would impart a smooth appearance to  
15 the finished bulkhead line.

16 The Chelan County Board of Adjustment granted a variance permit  
17 for the bulkhead and fill, including the 10 x 15 protrusion and  
18 including the diagonal line of bulkhead. A member of the Board of  
19 Adjustment testified at hearing that this approval was premised upon  
20 appellant's property right in the boathouse.

21 The respondent, Department of Ecology(DOE), approved a variance  
22 for the bulkheading and fill excepting the 10 x 15 foot protrusion but  
23 including the diagonal line of bulkhead. From this action of DOE,  
24 appellant appeals.

25 IV

26 Any Conclusion of Law which should be deemed a Findings of Fact is  
27

1 hereby adopted as such.

2 From these Findings the Board makes the following

3 CONCLUSIONS OF LAW

4 I

5 The Chelan County Shoreline Master Program (CCSMP) contains the  
6 following provisions pertinent to this appeal:

7 Section 21.1.4, p. 28:

8 Shoreline works and structures [includes bulkheads]  
9 shall be designed and constructed to blend with  
10 surrounding development insofar as feasible.  
11 (emphasis added.)

12 Section 22.1.5(f), p. 31:

13 Where a pre-existing adjacent landfill exists, the  
14 proposed landfill shall be physically tied to that  
15 landfill. The lakeward edge of the proposed  
16 landfill shall be reasonably located with respect  
17 to the existing landfill so as to blend with the  
18 artificial shoreline . . . (emphasis added.)

19 Also, provisions of the CCSMP allow filling waterward of the ordinary  
20 high water only to create a minimum building site. Section  
21 21.1.5(a)-(d). Appellant has not proved that its proposed development  
22 is necessary to create a minimum building site. Further, the CCSMP,  
23 at Section 33.1, p. 41, states that a non-conforming use, such as  
24 appellant's boathouse, may not be expanded so as to create greater  
25 non-conformity. Filling of the boathouse would create greater  
26 non-conformity with the CCSMP.

27 Because of the above provisions of the CCSMP appellant's proposed  
bulkheading and fill require a variance.

II

The criteria for shoreline variance is set forth at Section 32, p.

41, of the CCSMP:

32.1 A variance provides the opportunity for a property owner to make reasonable use of his property when adherence to the requirements of these regulations discriminate against the individual. A variance may be granted an individual property owner provided that all of the following conditions exist:

32.1.1 The hardship which serves as basis for granting of a variance is specifically related to the property of the applicant.

32.1.2 The hardship results from the application of the requirements of the Act and Master Program and not from, for example, deed restrictions or the applicant's own actions.

32.1.3 The variance granted will be in harmony with the general purpose and intent of the Master Program.

The CCSMP also provides, as to landfill, that where landfills are not necessary to obtain a minimum building site but where unique circumstances exist, a "reasonable variance" may be granted under the variance criteria of Section 32, above.

We conclude that the appellant is discriminated against by application of the requirements of the CCSMP to the lot as it existed free of any bulkhead or fill. This hardship justifies a reasonable variance to allow bulkheading which, with fill, smoothly aligns the subject lot with those on either side. Once this is accomplished the discrimination has been alleviated, and no hardship remains to justify expansion of the bulkhead and fill into the 10 x 15 foot waterward protrusion disapproved by DOE. We therefore conclude that the variance for bulkheading and fill proposed by appellant should be approved excepting the 10 x 15 foot protrusion, but including the

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 diagonal line of bulkhead approved by Chelan County.<sup>1</sup>

### 2 III

3 Chelan County, by its memorandum, has raised the legal issue of  
4 whether DOE has exceeded its statutory authority by approving this  
5 shoreline variance with conditions not found in the variance permit  
6 granted by Chelan County. Chelan County cites the authority for DOE's  
7 review of shoreline variances which states:

8 "Any permit for a variance or a conditional use by  
9 local government under approved master programs  
must be submitted to the department [DOE] for its  
approval or disapproval."

10 Chelan County urges that this entitles DOE to approve or disapprove a  
11 variance permit exactly as granted by the County but prohibits  
12 approval with conditions. We disagree. The power to disapprove  
13 necessarily includes the lesser power to condition an approval. State  
14 v. Crown Zellerbach Corporation, 92 Wn2d 894, 602 p. 2d 1172 (1979).  
15 See also Van Williams v. Department of Ecology, SH No. 78-33 (1979).

### 16 IV

17 Any Finding of Fact which should be deemed a Conclusion of Law is  
18 hereby adopted as such.

19 From these Conclusions the Board enters the following  
20  
21  
22

23 1. The same conclusions would follow from application of DOE's  
24 shoreline variance criteria, WAC 173-14-150.

25  
26  
27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

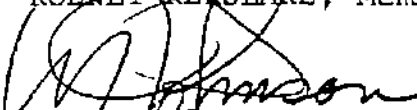
ORDER

The Department of Ecology's approval with conditions (Exhibit R-2) of the subject variance permit is hereby affirmed.

DONE at Lacey, Washington, this 3rd day of July, 1980.

SHORELINES HEARINGS BOARD

  
RODNEY KESTLAKE, Member

  
WILLIAM A. JOHNSON, Member

  
JAMES S. WILLIAMS, Member

  
DAVID AKANA, Member

CERTIFICATION OF MAILING

I, Laurel Clare, certify that I mailed, postage prepaid, copies of the foregoing document on the 3rd day of July, 1980, to each of the following-named parties at the last known post office addresses, with the proper postage affixed to the respective envelopes:

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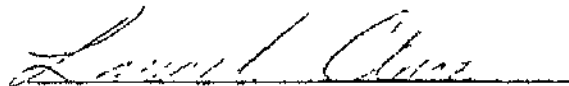
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LAUREL CLARE  
POLLUTION CONTROL HEARINGS BOARD